

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
(HOUSTON DIVISION)

BBC CHARTERING & LOGISTIC
GmbH & CO. KG

Plaintiff

V.

ROANOKE CLAIMS SERVICES

Defendant

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CIVIL ACTION NO. 14-0392

ADMIRALTY

Pursuant to Rule 9(h) of the
Federal Rules of Civil Procedure

COMPLAINT FOR DECLARATORY JUDGMENT

The plaintiff, BBC Chartering & Logistic GmbH & Co. KG (“BBC”), files this *Complaint for Declaratory Judgment* and respectfully represents as follows:

I.

BBC requests that this Court declare the rights, liabilities, and other legal relationships under a contract for the carriage of goods by sea, and to determine rights arising under that contract.

II.

The defendant, Roanoke Claims Services (“Roanoke”), is an entity that would be affected by this declaration.

III.

BBC is a foreign corporation organized and existing under the laws of a state other than the state of Texas, with its principal offices in Leer, Germany, and which was, at all relevant times, and is engaged in the business of operating vessels for the carriage of goods by sea. Specific to this

action, BBC was the charterer of the M/V BBC BANGKOK, an ocean going vessel engaged in the common carriage of goods by sea for hire.

IV.

Upon information and belief, Roanoke is the subrogated insurer of the cargo at issue. Upon further information and belief, Roanoke is organized and existing under laws of a state other than the state of Texas, and was, at all relevant times, and is doing business within this district.

V.

This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and this Court has jurisdiction over this action under 28 U.S.C. § 1331, as this action arises under the laws of the United States, in particular, the Carriage of Goods by Sea Act (“COGSA”), 46 U.S.C.A. § 30701 *et. seq.*, which BBC asserts is applicable to this contract for carriage both under the terms of the applicable contract of carriage and by operation of law, as well as 28 U.S.C. § 1333, as this is a claim that arises under the Court’s admiralty and maritime jurisdiction.

VI.

Prior to the alleged incident, BBC entered into an agreement with MIQ Global LLC d/b/a MIQ Logistics to transport the cargo at issue from Houston, Texas, to Matarani, Peru. The consignee was identified as MIQ Logistics Inc. S.R.L. The cargo, upon information and belief, was insured by Roanoke.

VII.

The cargo, specifically a Komatsu chassis unit 1702, was allegedly damaged during an attempted loading aboard the BBC BANGKOK in Houston, Texas, on or about September 7, 2013.

VIII.

The terms and conditions of carriage were as follows:

PARTICULARS DECLARED BY THE SHIPPER BUT NOT
ACKNOWLEDGED BY THE CARRIER

Number and kind of packages; description of cargo
SAID TO BE

“Parts Unit 1702”

* * *

Special Clauses

B. U.S. Trade Period of Responsibility

(i) In case the contract evidenced by this bill of lading is subject to the U.S. Carriage of Goods by Sea Act of the United States of America 1936 (U.S. COGSA), then the provisions stated in said act shall govern before loading, and after discharge and throughout the entire time the cargo is in the carrier's custody and in which event freight shall be payable on the cargo coming into the Carrier's custody. For U.S. trades, the terms on file with the U.S. Federal Maritime Commission shall apply to such shipments. In the event that U.S. COGSA applies, then the Carrier may, at the Carrier's election, commence suit in a court of proper jurisdiction in the United States in which case this court shall have exclusive jurisdiction.

(ii) If the U.S. COGSA applies, and unless the nature and value of the cargo has been declared by the shipper before the cargo has been handed over to the carrier and inserted in this Bill of Lading, the Carrier shall in no event be or become liable for any loss or damage to the cargo in any amount exceeding USD500 per package or customary freight unit. If, despite the provisions of 3(a), the Carrier is found to be liable for deck cargo, then all limitations and defenses available under US COGSA (or other applicable regime) shall apply and suit may be brought by the Carrier at the Carrier's election in the U.S. District Court of proper jurisdiction.

IX.

With notice of opportunity, the shipper failed to declare a higher value for the goods.

X.

Roanoke has wrongfully alleged liability on the part of BBC for damage to the Komatsu chassis unit 1702. Accordingly, BBC and Roanoke are entities interested under the contract for carriage within the meaning of the Declaratory Judgment Act, 28 U.S.C. § 2201(a).

XI.

As an ocean carrier under COGSA, 46 U.S.C. § 30701, *et seq.*, BBC is not liable for loss to cargo resulting from excepted causes. Any damage to the cargo at issue was exclusively caused by one or more excepted causes, including, but not limited to, an error in navigation and/or management of the BBC BANGKOK, peril(s) of the sea, and/or an Act of God. BBC is therefore not liable for any damage to the cargo.

XII.

Any and all alleged liability on the part of BBC is specifically denied. Assuming, however, that BBC is responsible for damage to the cargo, such damage is subject to the U.S. \$500.00 package limitation contained in COGSA insofar as the cargo constitutes a single “package” or customary freight unit.

WHEREFORE, the plaintiff, BBC Chartering & Logistic GmbH & Co. KG, prays that the defendant, Roanoke Claims Services, be cited and served, and that after all legal delays and proceedings this Court declare that:

The exceptions provided for by COGSA are a complete liability shield preventing any recovery by Roanoke from BBC for the alleged damaged cargo.

In the alternative, the limitation of liability provisions in COGSA apply to the contract of carriage, thus limiting any potential recovery of Roanoke to U.S. \$500.00 per package and/or customary freight unit for the alleged damages to the cargo.

In the further alternative, BBC is entitled to the benefits of the Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.*, as the alleged damage to cargo, if any, occurred without BBC's privity or knowledge.

BBC further prays for all general and equitable relief to which it may be entitled.

Respectfully submitted,

/s/ Jason P. Waguespack

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